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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/656,354
Filing Date: September 05, 2003
Appellant(s): MONSEN ET AL.

George M. Macdonald
For Appellant

EXAMINER'S ANSWER

I. Real Party in Interest

The real party in interest in this appeal is Pitney Bowes Inc., a Delaware corporation, the assignee of this application.

II. Related Appeals and Interferences

There are no appeals or interferences known to Appellants, their legal representative, or the assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-11 and 23-34 are in the case and under final rejection of the Examiner.
Claims 12-22 are canceled.

Claims 1,4-11, 23, and 26-34 are in the case and stand finally rejected under 35 U.S.C. 103(a) as allegedly rendered obvious by U.S. Patent Application Publication No. 2005/0177437A1 by Ferrier ("Ferrier '437") in view of U.S. Patent Application Publication No. 2002/0120475A1 by Morimoto ("Morimoto '475").

Claims 2, 3, 24 and 25 are in the case and stand finally rejected under 35 U.S.C. 103(a) as allegedly rendered obvious by U.S. Patent Application Publication No. 2005/0177437A1 by Ferrier ("Ferrier '437") in view of U.S. Patent Application Publication No. 2002/0120475A1 by Morimoto ("Morimoto '475") and in further view of U.S. Patent No. 7,080,044 to Cordery, et al. ("Cordery '044").

Appellants hereby appeal the final rejection of claims 1-11 and 23-34.

IV. Status of Amendments

There are no amendments to the claims filed subsequently to the Final Office Action of March 27, 2008. Therefore, the claims set forth in Appendix A to this brief are those as set forth before the final rejection.

V. Summary of Claim Subject Matter

The summary of claimed subject matter contained in the brief is correct

VI. Grounds of Rejection to be Reviewed on Appeal

Whether claims 1,4-11, 23, and 26-34 are patentable under 35 U.S.C. §103(a).
Whether claims 2, 3, 24 and 25 are patentable under 35 U.S.C. §103(a).
New ground of rejection is inserted in section IX.

VII. Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

VIII. Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

IX. Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejection – USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject

matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1, 4-11, 23, 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrier (Pub. No.: US 2005/0177437), in view of Morimoto (Pub. No.: US 2002/0120475).

As per claim 1, Ferrier teaches a method for authorizing payment upon delivery of an item to a destination comprising (see paragraph 0002 and 0048; also see paragraph 0064, Ferrier teaches a payment on delivery scheme, and it is commonly known that in such scheme, payment is authorized after buyer receives the item at the final destination):

registering each one of a plurality of receiving parties with a transaction module (see paragraph 0021, 0022, 0053, 0056, and 0057; "purchaser" is receiving party, and "gateway" is transaction module);

registering each one of a plurality of sending parties with the transaction module (see paragraph 0021, 0022, 0053, 0056, and 0057; "purchaser" is receiving party, and "gateway" is transaction module);

generating an shipment tracking identifier for use with a shipping system (see paragraph 0022, and paragraph 0062; "transaction identification" or "transaction ID" is identifier, and "transaction identification" is created when order is made; also see 0071 and 0075, it is implied that the identifier has shipment tracking ability);

associating the shipment tracking identifier with a particular sending party, a particular receiving party (see paragraph 0071, "...a transaction ID, comprising a supplier identification number, purchaser identification number");

storing data relating to the identifier and the particular sending party in the transaction module (see paragraph 0071, 0072 and 0100; "transaction ID" is identifier, and "seller" is sending party);

obtaining shipment tracking identifier data at a destination location from the shipping system indicating that the item has arrived at the destination (see paragraph 0064, especially "Here the courier enters the transaction ID, either manually or using a barcode scanner; this procedure is done upon purchaser's receipt of goods, which suggests it is done at a destination location; also as discussed earlier, it is implied that the transaction identifier has shipment tracking ability);

correlating the shipment tracking identifier data to the particular sending party and the item (see paragraph 0064, last two sentences, also as discussed earlier, it is implied that the transaction identifier has shipment tracking ability);

then authorizing a debit associated with the item from a selected account associated with the particular receiving party to a selected account of the particular sending party (see paragraph 0049 and 0064; it is implied that the authorization of debit is associated with the item; since purchaser can pay for the good using Electronic Funds Transfer, it is implied that the debit is from a selected account associated with the particular receiving party to a selected account of the particular sending party).

Ferrier implies the identifier has shipment tracking ability similar to the present invention. To support examiner's argument that an identifier possessing the shipping tracking ability is prior art to the present invention, additional evidence is given. Examiner notes, Ferrier does not explicitly teach associating a shipment tracking identifier with the item.

Morimoto teaches an identifier which has shipment tracking ability and associating such identifier with the item (see paragraph 0069 "a customer or shipping company may enter in a unique identifier that identifies the goods being shipped, and the database may respond by outputting the data file…during or after the shipping process the data file may be updated to match current conditions. For example, events such as arrival of the item at an intermediary destination, arrival at the final destination, damage to the item during shipment, and confirmation by the recipient of receiving the item may be conveyed to the central server, which may then update the database accordingly; also see paragraph 0014, which clearly indicates that the unique identifier is equivalent to a shipping tracking number).

Morimoto also suggests correlating the shipment tracking identifier data to the particular sending party and the item, and the receiving party (see paragraph 0060, the "unique item identification number", which is a shipment tracking number, is associated with all the relevant information inside the "data file").

Morimoto also implies obtaining shipment tracking identifier data at a destination location from the shipping system indicating that the item has arrived at the destination (see paragraph 0069, Morimoto teaches indicating the item has arrived at the final destination; the shipment tracking identifier data must be obtained at the destination location in order for the system to update the shipping status; USPS, FedEx, and UPS all scan the item to obtain shipment tracking number before handing the item to receiving party at final destination).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the reference to include that the identifier has shipment tracking ability, and correlating the shipment tracking identifier data to the particular sending party and the item and the receiving party.

One of ordinary skill in the art would have been motivated to modify the reference in order to employ existing shipping technology to provide shipment tracking of the purchased item.

As per claim 4 and 26, Ferrier teaches notifying the receiving party that the debit has occurred (see paragraph 0073 and 0087 last sentence).

As per claim 5 and 27, Ferrier teaches notifying the sending party that the debit has occurred (see paragraph 0073 and 0087 last sentence).

For claim 6-8 and claim 28-30, the word "operated" is understood as "To exercise one of a collection of activities of a product or feature during the normal course of using its functionality" or simply use the transaction module, as defined in google. The reason for such interpretation is that in applicant's specification, the receiving party clearly does not run or control the transaction module. Both receiving party and sending party must register to use the transaction module implies that none of these party is the "operator" of the transaction module under the common definition.

As per claim 6 and 28, Ferrier teaches wherein the transaction module is operated by the receiving party (see paragraph 0015-0039; gateway is equivalent to transaction modules; it is clear that the transaction module is used by the receiving party).

As per claim 7 and 29, Ferrier teaches wherein the transaction module is operated by the sending party (see paragraph 0015-0039; gateway is equivalent to transaction modules; it is clear that the transaction module is used by the sending party).

As per claim 8 and 30, Ferrier teaches wherein the transaction module is operated by a third party (see paragraph 0027, "where an entity operating a gateway enables said supplier to provide said purchaser with a payment option via said gateway"; gateway is equivalent to transaction modules; it is clear that the entity operating the transaction module is neither the sending party nor the receiving party, and thus is third party).

As per claim 9 and 31, Ferrier does not teach selecting a particular carrier from a plurality of carriers for transporting the item.

Morimoto teaches selecting a particular carrier from a plurality of carriers for transporting the item (see paragraph 0077).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the reference to include the step of selecting a particular carrier from a plurality of carriers for transporting the item.

One of ordinary skill in the art would have been motivated to modify the reference in order to choose the shipping carrier that most fitting the criteria.

As per claim 10, Ferrier teaches receiving confirmation information from the particular receiving party outside of the shipping system, at the transaction module, confirming satisfactory delivery, prior to the authorization (see paragraph 0067 last sentence and 0090, delivery is "authenticated" or confirmed before payment is authorized; also see 0086, Ferrier discloses in the case of unsatisfactory delivery, receiving party can return unwanted good, which further suggests that delivery is confirmed prior to the payment authorization step; also see paragraph 0048, Ferrier teaches the purchaser contacts the gateway to authorize the release of payment for the items upon delivery; it is implied that the purchase or receiving party also indicates the satisfactory of delivery, because it only make sense for the purchase to authorize the payment if he/she is satisfied with the item and delivery; it is implied that if the purchaser is not happy about the shipment, he/she can just choose not to pay; please also consider COD or Cash On Delivery, which is an old and well known shipping & payment method; also see Fig. 5 and paragraph 0081, both show that purchaser authorize payment through gateway outside of the shipping system).

As per claim 11 and 33, herein the identifier is stored as a bar code representation and the obtaining step includes scanning the bar code (see paragraph 0064, especially "Here the courier enters the transaction ID, either manually or using a barcode scanner"; as discussed above, "transaction ID" is identifier, and prior art clearly suggests that identifier is stored as a bar code).

12-22 (canceled).

As per claim 23, Ferrier teaches an apparatus for authorizing payment upon delivery of an item to a destination comprising (see paragraph 0002 and 0048; also see paragraph 0064, Ferrier teaches a payment on delivery scheme, and it is commonly known that in such scheme, payment is authorized after buyer receives the item at the final destination):

means for registering each one of a plurality of receiving parties with a transaction module (see paragraph 0021, 0022, 0053, 0056, and 0057; "purchaser" is receiving party, and "gateway" is transaction module);

means for registering each one of a plurality of sending parties with the transaction module (see paragraph 0021, 0022, 0053, 0056, and 0057; "purchaser" is receiving party, and "gateway" is transaction module);

means for generating an shipment tracking identifier for use with a shipping system (see paragraph 0022, and paragraph 0062; "transaction identification" or "transaction ID" is identifier, and "transaction identification" is created when order is

made; also see 0071 and 0075, it is implied that the identifier has shipment tracking ability);

means for associating the shipment tracking identifier with a particular sending party, a particular receiving party (see paragraph 0071, "...a transaction ID, comprising a supplier identification number, purchaser identification number");

means for storing data relating to the identifier and the particular sending party in the transaction module (see paragraph 0071, 0072 and 0100; "transaction ID" is identifier, and "seller" is sending party);

means for obtaining shipment tracking identifier data at a destination location from the shipping system indicating that the item has arrived at the destination (see paragraph 0064, especially "Here the courier enters the transaction ID, either manually or using a barcode scanner; this procedure is done upon purchaser's receipt of goods, which suggests it is done at a destination location; also as discussed earlier, it is implied that the transaction identifier has shipment tracking ability);

means for correlating the shipment tracking identifier data to the particular sending party and the item (see paragraph 0064, last two sentences, also as discussed earlier, it is implied that the transaction identifier has shipment tracking ability);

means for authorizing a debit associated with the item from a selected account associated with the particular receiving party to a selected account of the particular sending party (see paragraph 0049 and 0064; it is implied that the authorization of debit is associated with the item; since purchaser can pay for the good using Electronic Funds Transfer, it is implied that the debit is from a selected account associated with the particular receiving party to a selected account of the particular sending party).

Ferrier implies the identifier has shipment tracking ability similar to the present invention. To support examiner's argument that an identifier possessing the shipping tracking ability is prior art to the present invention, additional evidence is given. Examiner notes, Ferrier does not explicitly teach associating a shipment tracking identifier with the item.

Morimoto teaches an identifier which has shipment tracking ability and associating such identifier with the item (see paragraph 0069 "a customer or shipping company may enter in a unique identifier that identifies the goods being shipped, and the database may respond by outputting the data file...during or after the shipping process the data file may be updated to match current conditions. For example, events such as arrival of the item at an intermediary destination, arrival at the final destination, damage to the item during shipment, and confirmation by the recipient of receiving the item may be conveyed to the central server, which may then update the database

accordingly; also see paragraph 0014, which clearly indicates that the unique identifier is equivalent to a shipping tracking number).

Morimoto also suggests correlating the shipment tracking identifier data to the particular sending party and the item, and the receiving party (see paragraph 0060, the "unique item identification number", which is a shipment tracking number, is associated with all the relevant information inside the "data file").

Morimoto also implies obtaining shipment tracking identifier data at a destination location from the shipping system indicating that the item has arrived at the destination (see paragraph 0069, Morimoto teaches indicating the item has arrived at the final destination; the shipment tracking identifier data must be obtained at the destination location in order for the system to update the shipping status; USPS, FedEx, and UPS all scan the item to obtain shipment tracking number before handing the item to receiving party at final destination).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the reference to include that the identifier has shipment tracking ability, and correlating the shipment tracking identifier data to the particular sending party and the item and the receiving party.

One of ordinary skill in the art would have been motivated to modify the reference in order to employ existing shipping technology to provide shipment tracking of the purchased item.

As per claim 32, Ferrier implies means for tracking the item during the transportation of the item from a first location to the destination location (see 0071 and 0075, it is implied that the identifier has shipment tracking ability). To support examiner's argument that an identifier possessing the shipping tracking ability is prior art to the present invention, additional evidence is given.

Morimoto teaches means for tracking the item during the transportation of the item from a first location to the destination location (see paragraph 0069).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the reference to include means for tracking the item during the transportation of the item from a first location to the destination location.

One of ordinary skill in the art would have been motivated to modify the reference in order to allow users to find out the shipping status of the item.

As per claim 34, means for receiving confirmation information from the particular receiving party outside of the shipping system confirming satisfactory delivery prior to authorization (see paragraph 0067 last sentence and 0090, delivery is "authenticated" or confirmed before payment is authorized; also see 0086, Ferrier discloses in the case of unsatisfactory delivery, receiving party can return unwanted good, which further suggests that delivery is confirmed prior to the payment authorization step; also see paragraph 0048, Ferrier teaches the purchaser contacts the gateway to authorize the release of payment for the items upon delivery; it is implied that the purchase or receiving party also indicates the satisfactory of delivery, because it only make sense for the purchase to authorize the payment if he/she is satisfied with the item and

delivery; it is implied that if the purchaser is not happy about the shipment, he/she can just choose not to pay; please also consider COD or Cash On Delivery, which is an old and well known shipping & payment method; also see Fig. 5 and paragraph 0081, both show that purchaser authorize payment through gateway outside of the shipping system).

Claim 2, 3, 24, and 25 are rejected under U.S.C. 103(a) as being unpatentable over Ferrier (Pub. No.: US 2005/0177437), in view of Morimoto (Pub. No.: US 2002/0120475), and further in view of US Patent Number 7,080,044 to Cordery et al.

As per claim 2 and 24, Ferrier does not teach wherein the shipment tracking identifier is a postage indicia generated from a closed system postage meter.

Cordery teaches the identifier is a postage indicia generated from a closed system postage meter (see column 1, line 41-64; see column 2, line 48-58 teaches identifier are utilized by both open and closed system postage meter; see column 2, line 8-27 teaches the identifier is generated from a closed system postage meter; Cordery explicitly teaches both open and close system can generate a digital token which contain the postage value; digital token is interpreted as postage indicium, since they both indicate the postage value);

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the reference to specify the identifier is a postage indicium generated from a closed system postage meter.

One of ordinary skill in the art would have been motivated to modify the reference in order to specify the equipments of the invention.

As per claim 3 and 25, Ferrier teaches wherein the shipment tracking identifier is a postage indicia generated from an open system postage meter.

Cordery teaches the identifier is a postage indicia generated from a closed system postage meter (see column 1, line 41-64; see column 2, line 48-58 teaches identifier are utilized by both open and closed system postage meter; see column 2, line 8-27 teaches the identifier is generated from a closed system postage meter; Cordery explicitly teaches both open and close system can generate a digital token which contain the postage value; digital token is interpreted as postage indicium, since they both indicate the postage value);

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the reference to specify the identifier is a postage indicium generated from a closed system postage meter.

One of ordinary skill in the art would have been motivated to modify the reference in order to specify the equipments of the invention.

Additionally, a new ground of rejection is introduced:

Claim Rejection – USC 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In this case, independent claim 1 discloses "transaction module". The conventional definition of transaction module may include software, which is a non-statutory subject matter. The application does not explicitly disclose that the transaction module is hardware or an apparatus. Claim 2-11 depend on claim 1, and thus they are rejected for the same reason.

X. Response to Argument

Claims 1, 4-11, 23, and 26-34

1. Ferrier does not teach or suggest generating a shipment tracking identifier

The examiner suggests it is old and well known that the shipping tracking identifier can be generated by the delivery entity, such as USPS or other shipping carrier. The applicant argues that the shipment tracking identifier is not generated by USPS, instead it is generated by an open system postage. The examiner points out the contradictory of applicant's claim and the disclosure of the specification. See paragraph 0024, the specification discloses the present invention "allows the buyer, whose payment is typically handled by a third party

payment system, to withhold payment to the seller until the item has been tracked by a delivery system to ensure delivery to the buyer. For example, USPS Confirm system may be used to detect delivery of the item." The summary of invention of the present appeal brief also states that "The indicator (or shipment tracking identifier) is typically generated by an open system postage meter or a closed system postage meter. Also, other tracking mechanisms may be used such as tracking number from the USPS (United States Postal Service) delivery confirmation, bard codes, encrypted indicators, indicators with watermarks or encoding". It is clear in applicant's own words that the shipment tracking identifier can be generated by shipping entities, such as the USPS, as an alterative embodiment. Furthermore, the language of the claim does not exclude the use of shipment tracking identifier of USPS. The examiner points out again that Ferrier does teach the prior invention has tracking capability. See paragraph 0062 and 0075 of Ferrier, the prior art teaches the buyer can "check the progress of the delivery through the gateway at any future time using a link provided by the gateway to the delivery entity" and the "gateway also allows the supplier (seller) to have a capability to track and trace the delivery of the goods to the purchaser (buyer)". Shipment tracking identifier is not only old and well known in the art, it has been widely used by many shipping entities, such as USPS, UPS, FedEX, EMS, and etc. Typically, a shipment tracking identifier is generated by the shipping entity for use with a shipping system. The shipment tracking identifier or tracking number is associated with the items to be delivered,

the sending party, and the receiving party. Then, the receiving party can monitor the status of delivery through shipping entity's website. It is evident that the applicant is fully aware of such prior art, because it is mentioned in both the specification and the appeal brief. Even without any reference, one of ordinary skill in the art would immediately appreciate the use of shipment tracking identifier in the same manner as claimed by the applicant. The applicant argues that Ferrier teaches away from a shipment tracking identifier since the identifier taught there is not globally unique in a carrier system and therefore could not be used as a shipment racking identifier. The examiner disagrees with applicant's logic. First of all, the Ferrier reference does not post any limitation that the identifier is not globally unique in a carrier system. Second, in applicant's claim language, there is no such limitation that the shipment tracking identifier must be globally unique. Furthermore, there is no any fact or logical reason to support Ferrier teaches away from using a shipment tracking identifier.

2. The Morimoto reference is not properly combined with the Ferrier reference

In order to support his argument that shipment tracking identifier is old and well known, the examiner cited the Morimoto reference. See paragraph 0069 of Morimoto, "a customer or shipping company may enter in a unique identifier that identifies the goods being shipped, and the database may respond by outputting the data file...during or after the shipping process the data file may be updated to match current conditions. For example, events such as arrival of the item at an

intermediary destination, arrival at the final destination, damage to the item during shipment, and confirmation by the recipient of receiving the item may be conveyed to the central server, which may then update the database accordingly." Also see paragraph 0014, which clearly indicates that the unique identifier is equivalent to a shipping tracking number. The applicant, however, argues that the Morimoto reference is not properly combined since it has nothing to do with payment systems. The examiner again disagrees with the applicant's logic. The present invention relates to a payment and delivery system. The Ferrier reference also relates to a payment and delivery system, and the Morimoto reference has to do with delivering an item while providing tracking ability. All three inventions are related to delivery of an item, and thus they are reasonable pertinent to the problem being solved. Therefore, the Ferrier reference and the Morimoto reference are properly combined.

3. In Ferrier's system, the recipient had to be present and the recipient had to pay.

The examiner believes that the applicant has not fully reviewed the Ferrier reference. See abstract, paragraph 0035, 0048, and 0049. Ferrier teaches that the buyer "may pay for the goods at time of purchase, where funds are held in an escrow account until authorization by the purchaser to release these funds to the gateway is made at the point of delivery." The prior art discloses that the fund is held prepaid to an escrow account, and it is released only upon delivery of the item. Now, please turn the attention to paragraph 0067 and 0071 of Ferrier. The prior art clearly teaches that the use of escrow account is for the situation when

"the purchaser wishes to have goods delivered to a location where no one is available to receive the gods and pay for them. In this situation included in the transaction details would be a transaction value of zero, as on delivery no payment would be required to be paid." As such, Ferrier clearly teaches that the item can be shipped to another location other than buyer's address, and the recipient does not need to be present nor have to pay for the item.

4. Dependent claims

Applicant does not explicitly challenge the examiner's rejection on claims 4-11 and 26-34. The applicant merely argues that these claims are patentable over cited references for reasons described in the arguments of independent claims. The examiner has fully addressed all the arguments in the independent claims. Therefore, claims 4-11 and 26-34 stand rejected.

Moreover, with regard to claim 6-8 and 28-30, the applicant argues that there are three claimed configurations of the described system, respectively operated by receiving party, sending party and third party, and the applicant argues that Ferrier does not teach or suggest all three configuration. The examiner disagrees. As understood by the examiner, "operated by" receiving party, sending party and third party, means that all three parties can view and input their part of the information into the system. Ferrier clearly teaches that the third party operates the system throughout the whole reference. In paragraph 0062, Ferrier discloses that purchaser or the receiving party can check the progress of the delivery through the system, and thus teaches or at least

suggests that receiving party operates the system. In paragraph 0075, Ferrier also teaches that the supplier or sending party is allowed to track and trace the delivery of the goods through the gateway or the system. Therefore, Ferrier teaches or at least suggests the system can be operated by receiving party, sending party and third party.

Claims 2, 3, 24 and 25

Applicant does not explicitly challenge the examiner's rejection on claims 2, 3, 24 and 25. The applicant merely argues that these claims are patentable over cited references for reasons described in the arguments of independent claims. The examiner has fully addressed all the arguments in the independent claims. Therefore, claims 2, 3, 24, and 25 stand rejected.

The applicant also argues if the references when combined suggest an inoperative device without giving any rationale. The examiner disagrees with the applicant. Since the applicant does not provide any rationale, the examiner will not provide further comment.

The applicant further argues that Ferrier uses an identifier that is not globally unique for a carrier and thus would not be used with a shipment racking identifier. As such, the proposed combination is improper as it would apparently not function. The examiner disagrees and this argument has been addressed above.

XI. Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

XII. Oral Argument

The applicant does not request for oral argument.

In conclusion, the examiner reaffirms the rejection on claims 1-11 and 23-34.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be

treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,
/Hao Fu/
Examiner, Art Unit 3696

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Conferees:
Vincent Millin /VM/
Appeals Conference Specialist TC 3600

Thomas Dixon
/THOMAS A DIXON/
Supervisory Patent Examiner, Art Unit 3696